



State of New Hampshire

DEPARTMENT OF SAFETY
OFFICE OF THE COMMISSIONER
33 HAZEN DR. CONCORD, NH 03305
603/271-2791

JOHN J. BARTHELMES
COMMISSIONER

Petition in the Matter of

Ossipee Bluffs Association

Lake Ossipee, Center Ossipee, N.H.
Congregate Mooring Field

HISTORY:

The Department of Safety received a petition from James F. Rines, P.E., L.L.S., C.P.E.S.C., President of White Mountain Survey & Engineering, Inc., which was prepared and submitted as a congregate mooring plan on behalf of Ossipee Bluffs Association (Association) or (Petitioner). The letter/petition was based on a March 14, 2012 meeting with Mr. Paul Nigro and Mr. Kent Roberts, representatives of the Petitioner.

The Petitioner is requesting that seven (7) of the seventeen (17) established moorings located on the easterly side of the mooring field be relocated to the westerly side of the field. The Petition, received on April 4, 2012, offered the reasons for the requested relocation. In part, the Petition requests that the moorings be temporarily relocated due to inadequate water depth caused by the continual sedimentation being deposited in [their] present location. The Petition was assigned to and investigated by Ms. Sharon Champagne, Supervisor, Mooring Program, Department of Safety.

Pursuant to RSA 541-A, a public hearing was held on Thursday, May 24, 2012 at 2:00 p.m. at the New Hampshire Department of Safety, 33 Hazen Drive, Concord, New Hampshire. The scope of the hearing was to allow for and consider public comment in accordance with RSA 270:62, VI, RSA 270:67, RSA 270:68 and New Hampshire Code of Administrative Rules, Saf-C 408 (et seq.) on the Petitioner's request.

Mr. Curtis Duclos, Hearings Examiner, conducted the public hearing as designee of John J. Barthelmes, Commissioner, Department of Safety.

OPENING REMARKS:

Everyone present was informed of the following:

- the Notice of Hearing was read to the persons in attendance;
 - the Petition and all supporting documents will be available for review;
 - the public hearing is recorded;
 - the recording will be preserved for seventy-five (75) days along with an explanation of the procedure by which to receive a copy of the recording;
 - their opportunity to sign the appropriate "sign-up sheet" to present comment on the petition;
 - notification of the public hearing was published in The Union Leader on April 26, 2012 which is a newspaper of statewide circulation, and a clipping from the newspaper was displayed;
 - they could review the legal notice clipping from the newspaper, along with the original petition and any other documents; and;
 - how and where to submit written comment that must be received by the Department of Safety within ten (10) calendar days following the hearing.
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STATISTICS:

- On May 24, 2012, three (3) persons spoke at the public commentary hearing. Within the ten days following, no letters or email comments were received.
- On Monday, June 4, 2012, at the end of the business day, the hearing was closed to public comment (*as the tenth day fell on a weekend day*).

OFFICIAL NOTICE:

- Published announcement on April 26, 2012 of the public hearing in a newspaper of statewide circulation;
- Application for permission to temporarily relocate moorings within a Congregate Mooring Field with an attached set of diagrams each describing the area; the two diagrams are marked for identification as:
 - Exhibit A - Plan of existing approved mooring field; and,
 - Exhibit B - Plan of the proposed relocation;
- A 'poster size' aerial color photograph showing the mouth of the Lovewell River and the area of sediment that was described by Mr. Robarts during the public hearing. Some of the moored boats are shown in the picture to the right side of the mouth of the river with the sediment to the left.
- Commissioner Barthelmes recommended approval of seventeen congregate moorings that was subsequently approved by Governor and Council on June 4, 2008 (agenda item #158).

SYNOPSIS OF TESTIMONY:

Ms. Sharon Champagne, Moorings Supervisor, stated that the abutters had been properly notified of this hearing. She provided an overview of the proposed temporary relocation of the seven moorings saying that the Mooring Bureau has no concerns with this proposal.

Mr. Paul A. Nigro testified at the public comment hearing as a spokesperson representing Ossipee Bluffs Association (Petitioner). He used a large photograph of the area of the lake where the present mooring field is located and pointed out the mouth of the river and the sandbar contributing to the sediment buildup affecting the water depth within the moorings site. The picture is an original, which he feels cannot be marked as an exhibit due to ongoing litigation with an abutter.

Mr. Kent F. Robarts testified at the public comment hearing as the president of the Ossipee Bluffs Association. He supports the testimony of Mr. Nigro. Mr. Robarts, in addition to using the photograph Mr. Nigro utilized during his commentary, also described the area by means of a large aerial photograph. Using both photographs and comparing them with the diagrams (Ex A and Ex B), he explained that there is ongoing litigation between the Petitioner and an abutter over the cause of the sediment and its affect on the lake. Mr. Robarts testified that the sediment is the result of the abutter's fence, located within the lake, which has contributed to altering the flow of water from the Lovewell River.

This altered flow of water has resulted in a ongoing deposit of sediment consisting of sand and leaves resulting in lowering the water depth within the current congregate mooring field. He concluded saying that an ongoing evaluation of this described sediment deposit is being studied by the Department of Environmental Services.

SYNOPSIS OF COMMENTARY RECEIVED AFTER THE HEARING:

None

LEGAL ANALYSIS:

In gathering findings of fact, the following is given consideration:

RSA 270-D: 2 General Rules for Vessels Operating on Water.

"...Vessels shall be operated at headway speed only, while passing under all bridges. VI. (a) To provide full visibility and control and to prevent their wake from being thrown into or causing excessive rocking to other boats, barges, water skiers, aquaplanes or other boats, rafts or floats, all vessels shall maintain headway speed when within 150 feet from: (1) Rafts, floats, swimmers; (2) Permitted swimming areas; (3) Shore; (4) Docks; (5) Mooring fields; (6) Other vessels. . . ."

RSA 270:60 Mooring of Boats on Public Waters

The general court finds that:

- (a) Water is a public resource held in trust by the state and that the state maintains jurisdiction to control the use of public waters for the greatest public benefit; and
 - (b) The public waters are a significant asset which enhance the well-being and lifestyle of the state's citizens, benefit the state's substantial tourist industry and the environment, and are a habitat for many fish and wildlife; and
 - (c) That undue proliferation of moorings is detrimental to the integrity of the state's waters and the public's enjoyment thereof.
- I. The general court intends to establish through this subdivision a means of regulating the usage of moorings on public waters. Existing moorings may be permitted in their existing locations, provided such moorings comply with the provisions of this subdivision.
 - II. The general court does not intend, by passage of this legislation, to convey to, create for, or recognize any rights of shorefront property owners.

270:64 Moorings Prohibited

- I. No mooring shall be located:
 - (a) in such a manner that it constitutes a hazard to the public safety because it interferes with or impedes, or could potentially interfere with or impede, navigation; or
 - (b) in such proximity to other moorings as to constitute a hazard to public safety; or
 - (c) in such a manner that it presents an unreasonable adverse effect on the environment, including but not limited to water quality, wildlife habitats, or natural areas; or
 - (d) in such a manner that it unreasonably interferes with other recreational uses of the water and adjacent land.
- II. The director shall develop rules to carry out the purposes of this subdivision pursuant to RSA 270:71 and RSA 541-A.
- III. The director shall consult with the fish and game department, the department of environmental services, or the office of energy and planning to assist in the assessment required under subparagraph I(c).

270:67 Public and Congregate Mooring Fields: Permit Required.

I. Public Mooring Fields.

- (a) The division of state police shall identify suitable locations for public mooring fields and prioritize the need for the development of such sites. In determining said locations the division of state police shall recommend each location size and the configuration of each public mooring field. Further, it shall be determined by the division of state police that adequate access exists to serve the needs of the users of the public mooring field. Said site proposal shall then be transmitted to the respective political subdivision or subdivisions in which the proposed mooring field is to be located, where a public hearing on said site proposal may be conducted by the division of state police. The division of state police shall review all recommendations received and submit their final site proposal to governor and council for approval. All such recommendations shall be consistent with any existing master plans, zoning ordinances, wetlands conservation district ordinances, and capital improvement programs of the adjacent municipality.
- (b) The division shall issue a permit to any applicant for a mooring in a public mooring field who fulfills the mooring requirements in this subdivision subsequent to approval under subparagraph (a).
- (c) Each public mooring field applicant shall be assessed a fee of \$25 which shall be deposited in the navigation safety fund established under RSA 270-E:6-a.
- (d) No mooring shall be sold or leased except as provided in this section.

II. Congregate Mooring Fields.

- (a) The division of state police may identify suitable locations for congregate mooring fields. In determining said locations the division of state police shall recommend each location size and the configuration of each congregate mooring field. Further, it shall be determined by the division of state police that adequate access exists to serve the needs of the users of the congregate mooring field. Said site proposal shall then be transmitted to the respective political subdivision or subdivisions in which the proposed mooring field is to be located, where a public hearing on said proposal may be conducted by the division of state police. The division of state police shall review all recommendations received and submit their final proposal to governor and council for approval. All such recommendations shall be consistent with any existing master plans, zoning ordinances, wetlands conservation district ordinances, and capital improvement programs of the adjacent municipality.
- (b) Subsequent to approval by the governor and council, the division shall issue a permit to any applicant for a congregate mooring field who shows that:
 - (1) The location and size of the congregate mooring field meet the criteria established pursuant to RSA 270:71; and
 - (2) Adequate access exists to serve the needs of the users of the congregate mooring field; and
 - (3) The congregate mooring field will comply with the provisions of RSA 270:64; and
 - (4) No mooring shall be sold or leased except as provided in this section.
- (c) Each congregate mooring field permitted by the director shall be assessed an annual mooring fee of \$25 for each mooring installed in the congregate mooring field which shall be deposited in the navigation safety fund established under RSA 270-E:6-a.
- (d) Operators in charge of maintaining congregate mooring fields may charge no more for the use of a mooring than an amount which reasonably covers the costs of mooring installations and maintenance. Said charges shall be reported to the division of state police who shall submit an annual report to the governor and council and the general court on all congregate mooring fields.

- III. Notwithstanding RSA 270:61, III, small mooring sites may be established without the approval of governor and council, but subject to the approval of the division. Such sites shall be only for the use of motels, cottages, condominiums, other rental property, or homogeneous use group.

270:68 Mooring Areas: Designation

- I. The division shall determine the need and suitable locations, size, and configuration for mooring areas. The director shall designate appropriate mooring areas and assign mooring sites within such designated areas to individuals who meet all other requirements of this subdivision and can demonstrate a need for a site in such area. All designated mooring areas shall be consistent with any existing master plans, zoning ordinances, wetlands conservation district ordinances, and capital improvements programs of the adjacent municipality.
- II. Any mooring which does not comply with the specifications of this section may be subject to removal at the owner's expense.

Selected Administrative Rules

Saf-C 401.04 "Congregate mooring field" means a mooring field dedicated to homogeneous use groups, such as, but not limited to clubs, associations and youth camps.

Saf-C 401.16 "Mooring field" as defined in RSA 270:59, VII includes congregate and public mooring fields.

Saf-C 408.05 Mooring Permit Application.

Saf-C 408.07 Congregate Mooring Permit Application.

Pursuant to RSA 270:61 through and including RSA 270:68 along with New Hampshire Code of Administrative Rules, Saf-C 408 (*et seq.*) defines and regulates the practice of mooring of boats. RSA 270:67 further delineates designation of locations and other specific criteria to consider.

LEGAL ANALYSIS ~ DISCUSSION:

The number of people in attendance at the hearing and the numbers of persons recorded for or against the proposed petition is given weight in determining findings; however, greater significance is given to the specific information submitted for review by testimony and the information within the petition, seeking permission for the proposed relocation of seven existing moorings. In this evaluation, Mr. Nigro and Mr. Robarts each provided commentary supporting the letter authored by Mr. Rines (*supra*). In addition, the Moorings Supervisor supports the Petition.

There was little information supplied on the topics specifically required under statute and rule when applying initially for a Congregate Mooring Field or seeking additional moorings. In this case however, the Petition is to temporarily relocate seven of seventeen moorings from one side of the mooring field to the other. The Petitioner explains this action is necessary due to the deposits of sedimentation from the Lovewell River reducing the water depth to two feet or less.

After carefully considering the exhibits, testimony and public comment presented, Findings of Fact are issued (*infra*).

FINDINGS OF FACT:

1. Pursuant to RSA 270:67, the Ossipee Bluffs Association, (Petitioner) requested the Department of Safety to conduct a public hearing seeking a temporary relocation of seven moorings within an approved Congregate Mooring Field. The mooring field presently has seventeen moorings.
2. Official notification for the hearing was published in a newspaper of statewide circulation, The Union Leader, Manchester, New Hampshire on April 26, 2012.
3. A public hearing was scheduled on Thursday, May 24, 2012 at 2:00 PM on the issue and conducted pursuant to RSA 541; RSA 270:67; RSA 270:68 and Administrative Rule, Saf-C 408 at the Department of Safety, 33 Hazen Drive, Concord, New Hampshire.
4. The Petitioner seeks approval to temporarily move seven of the seventeen moorings within an established Congregate Mooring Field located in Lake Ossipee. The described area is shown on a diagram submitted by the Petitioner, prepared by White Mountain Survey & Engineering, Inc. The diagram encompasses the shorefront property at Bluffs Boulevard, Ossipee, New Hampshire.
5. The diagram provides satisfactory placement and distances referenced within the Petitioner's application and testimony at the public hearing.
6. Public comment was received in reference to the scope of review within RSA 270:67, RSA 270:68, and Administrative Rule, Saf-C 408, including inadequacy of the water depth.
7. The Petitioner, through the June 4, 2008 approval of the Congregate Mooring Field by Governor and Council, is approved for the number and locations of the seventeen moorings requested. The approval to relocate seven moorings temporarily, due to an ongoing accumulation of sediment causing inadequate water depth, is reasonable.
8. The effect which adopting or not adopting the petition would have upon the public safety is considered. There are no additional moorings requested, just temporary relocation. There is adequate and accurate information to support the Petitioner's request.

DISCUSSION - DISPOSITION:

The submitted information is thoroughly taken into account within the Petitioner's application and testimony, along with public commentary received. I recommend supporting the Petition based upon the Findings of Fact listed (*Supra*) and that you reach the following Conclusion of Law.

CONCLUSION OF LAW:

The Petitioner has presented sufficient proof to sustain the request for the temporary relocation of seven moorings in concurrence with RSA 270:67, RSA 270:68 and New Hampshire Code of Administrative Rules Saf-C 408.

RECOMMENDATION: New Hampshire Governor and Council

I respectfully recommend this Petition **be granted**. The evidence demonstrates that the Petition is in the public interest fulfilling the purpose of law. There is sufficient proof that the Petitioner has met the burden by a preponderance of the evidence therefore showing cause that the temporary reconfiguration of the existing "Congregate Mooring Field" be allowed pursuant to RSA 270:67, RSA 270:68 and Administrative Rule, Saf-C 408.

Very truly yours,



John J. Barthelmes, Commissioner
Department of Safety

Date: 6/8/12

cc: Petitioner Designee
 (*To be distributed to co-Petitioners*)

Colonel Robert L. Quinn,
Director of State Police

Christopher Casco, Esq.
Administrator,
Bureau of Hearings

File

Distributed to Petitioner, Abutter(s),
and the Town of Ossipee

By: Sharon Champagne,
Moorings Supervisor